



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MAILED

APR 13 2010

OFFICE OF PETITIONS

CANTOR COLBURN, LLP
20 Church Street
22nd Floor
Hartford, CT 06103

In re Application of :
Percheron et al. : DECISION ON APPLICATION
Application No. 09/744,600 : FOR PATENT TERM ADJUSTMENT
Filing date: January 26, 2001 :
Attorney Docket No. PLS0012US :

This is in response to the "Application for Patent Term Adjustment Under 37 C.F.R. §1.705" filed October 21, 2009. Applicants request the initial determination of patent term adjustment be corrected from zero (0) days to two thousand five hundred one (2,501) days.

The application for patent term adjustment is **dismissed**.

On November 18, 2004, the Office mailed a "Determination of Patent Term Extension under 35 U.S.C. 154(b) (application filed after June 7, 1995 but prior to May 29, 2000)" indicating the patent term extension to date is 0 days. Applicants assert a period of adjustment of 2,051 days is appropriate due to examination delay.

Applicants arguments are based on an assumption the provisions of the Patent Term Guarantee Act of 1999, Pub. L. No. 106-113, § 4402, 113 Stat. 1501A-557 (codified at 35 U.S.C. § 154(b)) apply to the instant case. However, the provisions of the act only apply to original applications, other than designs, filed on or after May 29, 2000. The provisions of the act do not apply to international applications filed before May 29, 2000. If the international filing date is before May 29, 2000, the provisions of the act do not apply even if the application fulfills the requirements of 35 U.S.C. § 371 on or after May 29, 2000. *See* Comment 6 to Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term (Final Rule), 65 Fed. Reg. 56366 (September 18, 2000).

Since the international filing date of this application, July 26, 1999, is before May 29, 2000, the provisions of the act are inapplicable.

Although the provisions of the Patent Term Guarantee Act of 1999 do not apply in this case, the provisions of former 35 U.S.C. § 1.154(b) and 37 C.F.R. § 1.701 are applicable because the filing date for the application is on or after June 8, 1995, and before May 29, 2000. Under the statute and regulation, the term of a patent can be extended by up to a maximum of five years as a result of delays in the issuance of the patent due to interferences, secrecy orders, and/or successful appeals to the Board of Patent Appeals and Interferences or federal courts. The record

fails to indicate any time was consumed by a secrecy order, interference, or successful appeal in this case. Therefore, the Office has no authority to grant an extension of the patent term.

Receipt of the \$200.00 fee set forth in 37 C.F.R. § 1.18(e) is acknowledged. No additional fees are required.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.



Anthony Knight
Director
Office of Petitions